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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Gunnar Ned Watahomigie,

13 Defendant.
14

No. CR-22-08066-001-PCT-DWL

ORDER

15 Pending before the Court is the government's motion to dismiss the indictment
16 without prejudice pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure. (Doc.
17 84.) Although Defendant does not oppose dismissal, he contends the dismissal should be
18 with prejudice. (Doc. 88.)

19 The government's request for a without-prejudice dismissal is granted. Under Rule
20 48(a), "[t]he government may, with leave of court, dismiss an indictment, information, or
21 complaint." The Ninth Circuit has explained that "Rule 48(a) allows the government,
22 provided it is not acting in bad faith, to dismiss an indictment without prejudice and later
23 to reindict based on the same or similar charges. . . . [W]hen the government requests a
24 Rule 48(a) dismissal in good faith, the district court is duty bound to honor the request."
25 *United States v. Hayden*, 860 F.2d 1483, 1488 (9th Cir. 1988). *See also United States v.*
26 *Maximov*, 2009 WL 5174983, *2 (D. Ariz. 2009) ("The standard for holding that a Rule
27 48(a) dismissal is with prejudice, and thereby blocking re-prosecution of a defendant, is
28 essentially the same as the standard for denying a Rule 48(a) motion. Both require some

1 showing of bad faith on the part of the prosecution. This makes sense, because both actions
2 interfere with prosecutorial discretion. Thus, the Ninth Circuit has held that Rule 48(a)
3 allows the government to dismiss an indictment without prejudice and later to re-indict
4 based on the same or similar charges, provided it is not acting in bad faith. Other courts
5 likewise have held that a dismissal under Rule 48(a) should be with prejudice only when
6 the government acts in bad faith.”) (cleaned up).

7 Here, the Court finds that the government is not acting in bad faith—its rationale
8 for seeking a without-prejudice dismissal (Doc. 84 at 1; Doc. 90) is logical and appropriate,
9 and Defendant’s seeming claim of undue delay (Doc. 88) is unfounded, for the reasons
10 stated in the government’s reply (Doc. 90).

11 Accordingly,

12 **IT IS ORDERED** that the government’s Rule 48(a) motion to dismiss the
13 indictment without prejudice (Doc. 84) is **granted**.


14 **IT IS FURTHER ORDERED** that the indictment is **dismissed without prejudice**.

15 **IT IS FURTHER ORDERED** that the Federal Medical Center in Springfield,
16 Missouri discharge Defendant to the custody of the U.S. Marshal Service.

17 **IT IS FURTHER ORDERED** that the U.S. Marshal Service shall transport
18 Defendant to the District of Arizona to be released from custody as to this matter only.

19 **IT IS FURTHER ORDERED** that the Clerk shall terminate this action and vacate
20 all pending deadlines and hearings.

21 Dated this 12th day of July, 2024.

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24 _____
25 Dominic W. Lanza
26 United States District Judge
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